



June 25, 1999

Ms. Helen K. Bright  
Office of General Counsel  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701

OR99-1773

Dear Ms. Bright:

You ask this office to reconsider our ruling in Open Records Letter No. 99-0849 (1999). Your request was assigned ID# 125222.

The University of Texas at Austin (the “university”) received two requests for documents that relate to the requestor. In Open Records Letter No. 99-0849, we concluded that the requestor was entitled to copies of the submitted documents with the identities of the alleged victims and witnesses redacted. In your request for reconsideration, you argue that because an adequate summary of the investigation exists, the university need not release a de-identified copy of the submitted records. Alternatively, you argue that the university should be allowed to redact more information in order to protect the identities of the alleged victims and witnesses. We have reviewed the submitted information and your arguments for withholding additional information.

As this office stated in Open Records Letter No. 99-0849, we do not believe the submitted documents include an adequate summary of the investigation. Although you have identified various documents you believe adequately summarize the events at issue, this office does not believe these documents fully convey the extent of the allegations or fully outline the actions taken by the university in response to these complaints.

It appears also that the university would have us apply a different standard, the informer’s privilege, rather than the common-law privacy test that is traditionally applied to documents

relating to sexual harassment. The informer's privilege protects the identity of a person who reports a violation or possible violation of the law to officials charged with the duty of enforcing the particular law. The privilege also protects individuals who report violations to administrative agencies having a duty to enforce statutes with civil or criminal penalties. *See* Open Records Decision No. 515 at 2 (1988). The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. *Roviaro v. United States*, 353 U.S. 53, 59 (1957).

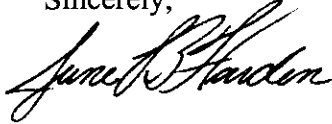
This office does not believe the individuals or the communications at issue fall within the protection of the informer's privilege. *See* TEX. R. CRIM. EVID. 508(c); *see also* Open Records Letter No. 99-0969 (1999) (public employees have duty to report violations of work-related policies). Furthermore, assuming that the information did fall within the protection of the informer's privilege, we note that the university did not raise or argue the informer's privilege in its original request for a decision. *See* Gov't Code § 552.301 (governmental body must raise its exceptions within statutory time period), *see also* Open Records Decision Nos. 549 (1990) (concluding claim under informer's privilege may be waived by governmental body since privilege belongs to government), 542 (1990) (concluding that Open Records Act places on governmental body burden of establishing why and how an exception applies to requested information). Therefore, we do not believe that the informer's privilege is the appropriate standard to apply to the submitted documents.

The university also argues that in accordance with Open Records Decision No. 224 (1979), the university should redact any information that makes the identities of the victims and witnesses "easily traceable" through handwriting, style of expression, or the particular incident related to the comments. We note that the "easily traceable" standard described in ORD 224 is only applied to information protected from disclosure by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Since the submitted statements are not education records, the "easily traceable" standard is not applicable in this instance.

As this office stated in Open Records Letter No. 99-0849, when addressing information relating to sexual harassment, this office applies the common-law standard articulated by the court in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen*, the court concluded that *common-law privacy* protects the identities of victims of alleged sexual harassment; but there is a legitimate public interest in releasing certain factual details regarding the allegations. Although we recognize that a "reasonably diligent investigator" might be able to discern the identities of the victims and witnesses from their statements, we conclude that absent an adequate summary, the university must release the detailed statements in order to satisfy the legitimate public interest. The public interest would not be served if the statements were redacted in the manner proposed by the university.

Therefore, based on the foregoing reasons, we conclude that the law was correctly applied in Open Records Letter No. 99-0849. Open Records Letter No. 99-0849 is, hereby, affirmed. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 125222

Encl. Submitted documents

cc: Stephen C. Stappenbeck  
1602 Norris Drive  
Austin, Texas 78704  
(w/o enclosures)